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STATE OF NEW JERSEY  
DIVISION OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY  
DOCKET NO.

In the Matter of the Suspension )  
or Revocation of the License of )

DAVID J. GARBOLINO, D.D.S. )

To Practice Dentistry in the )  
State of New Jersey )

Administrative Action

FINAL DECISION AND ORDER

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This matter was opened to the New Jersey State Board of Dentistry (hereinafter "Board") upon the filing of an administrative complaint on July 25, 1994, by Deborah T. Poritz, Attorney General of New Jersey (Deputy Attorney General Denise A. Cobham appearing), alleging that on September 21, 1993, respondent entered a plea of guilty in the Superior Court of New Jersey, Monmouth County, Law Division - Criminal, to the crime of theft by deception in violation of N.J.S.A. 2C:20-4a. Respondent thereby admitted that he submitted false claims for services to dental insurance carriers causing such carriers to pay him for procedures and services that had not been provided. Subsequently, on March 18, 1994, pursuant to the plea agreement reached between the State of New Jersey and the respondent, Dr. Garbolino was sentenced as follows: 1) four years to the custody of the Commissioner of the Department of Corrections; 2) restitution by stipulation payable in the amount of \$100,000.00 through the Probation Department. The complaint further alleged that the crime for which respondent was convicted constitutes a crime involving moral turpitude within the meaning of N.J.S.A. 45:1-21(f) and N.J.S.A. 45:6-7(b); that respondent's admission that he fraudulently obtained monies

from insurance companies by his billing practices constitutes the use or employment of fraud or deception within the meaning of N.J.S.A. 45:1-21(b); and that respondent's conviction of the third degree crime of theft by deception constitutes professional misconduct within the meaning of N.J.S.A. 45:1-21(e). An answer, affirmative defenses, and demand for hearing was filed on behalf of the respondent by John Paul Dizzia, Esq. on August 11, 1994.

The matter originally was transferred to the Office of Administrative Law as a contested case. However, the Board agreed to hear the matter in its entirety upon stipulation by the parties that the crime for which Dr. Garbolino was convicted on March 18, 1994, is a crime of moral turpitude and a crime relating adversely to the dental profession within the meaning of N.J.S.A. 45:1-21(f) which may subject him to regulatory discipline. The Board then scheduled the matter for hearing on August 2 and August 16, 1995, primarily for the purpose of providing respondent an opportunity to present evidence in mitigation of penalty.

Accordingly, the hearing was held on August 2 and August 16, 1995, before the Board. Deputy Attorney General Denise A. Cobham appeared on behalf of the Attorney General. John Paul Dizzia, Esq., appeared for the respondent. All Board members join in this Decision and Order with the exception of Dr. Anthony Villane who was not present for the hearings or the deliberations in this matter.

#### DISCUSSION

As a preliminary matter, the Board accepted into evidence a Stipulation marked as a joint exhibit (J-1) wherein it was agreed by the parties that Dr. David Garbolino was arrested for the second

degree crime of theft by deception contrary to N.J.S.A. 2C:20-4a; and that on September 21, 1993, Dr. Garbolino pled guilty to Accusation No. 93-09-01534, as amended, which charged him with third degree theft by deception; and that on March 18, 1994, a Judgment of Conviction (a copy of which was made a part of the Stipulation) was entered against Dr. Garbolino, and he was sentenced to four years in the custody of the Commissioner of the Department of Corrections as well as restitution in the amount of \$100,000.00. It was further stipulated that the crime for which Dr. Garbolino was convicted is a crime of moral turpitude and a crime relating adversely to the dental profession within the meaning of N.J.S.A. 45:1-21(f) subjecting him to regulatory discipline. Accordingly, the Board moved unanimously to accept the aforementioned terms of the Stipulation as findings of fact and conclusions of law and moved immediately into the second phase of the hearing consisting of evidence in mitigation of penalty.

The following documents were admitted into evidence<sup>1</sup>:

R-1 February 14, 1995 letter of John Paul Dizzia, Esq. with exhibits marked A. through F.

R-2 July 13, 1995 letter of Mr. Dizzia with attachments.

R-3 Progress Report, New Jersey Intensive Supervision Program, Vol. 11, Issue 1, 1994.

R-4 Weekly budget sheets for January 2, 1995 through July 10, 1995 for the respondent.

R-5 Dr. Garbolino's 1989 tax return.

R-6 Dr. Garbolino's 1990 tax return.

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<sup>1</sup> Items marked R represent items submitted by the respondent; items marked S represent items submitted by the Attorney General.

R-8 July 18, 1995 letter from the Intensive Supervision Program concerning Dr. Garbolino's community service.

S-1 Dr. Garbolino's 1984 tax return.

S-2 Dr. Garbolino's 1985 tax return.

S-3 Dr. Garbolino's 1986 tax return.

S-4 Dr. Garbolino's 1987 tax return.

S-5 Dr. Garbolino's 1988 tax return.

S-7 Patient file of David Rible for the period 1989-1991.

Dr. Garbolino testified to the Board in his own behalf. He advised the Board that he is married and has four children aged 5, 7, 14 and 20 (the two oldest children are from his wife's former marriages). He has been in private practice in Wall Township since 1984 in the same community where he grew up. Dr. Garbolino candidly admitted to the Board that beginning in 1988 he started submitting inflated insurance claims to carriers on behalf of patients so that they would not have to make any co-payment. For example, if Dr. Garbolino performed a dental service consisting of one crown and the patient had an insurance plan which paid 50% for dental procedures, Dr. Garbolino would submit a bill for two crowns. In this way he guaranteed full payment for himself. At the same time he pleased his patients who incurred no financial liability for dental services notwithstanding the fact that their insurance benefit plan would have required a co-payment. This practice continued for approximately three and a half years until he was caught in 1992. By that time he had wrongfully received in excess of \$100,000.00 in insurance overpayments. According to Dr. Garbolino's tax returns, he earned as much as \$293,000.00 in gross income in 1990 which plummeted to

\$137,000.00 in gross income in 1993 after the over-billing practices terminated. Dr. Garbolino also readily admitted that he spent the money that he wrongfully received for his personal benefit and that of his family.

These practices came to a sudden halt in August 1992 when an investigation of Dr. Garbolino's billing practices conducted jointly by local police and the Board's investigators culminated in a search and seizure of Dr. Garbolino's dental records. Dr. Garbolino readily admitted his wrongdoing on the day of the search and, in fact, assisted the investigators by showing them which records contained instances of over-billing.

Dr. Garbolino advised the Board that Wall Township is a small town and that his arrest and indictment received extensive newspaper coverage resulting in the loss of many patients. In addition, Dr. Garbolino's criminal sentence required him to spend three months in the Monmouth County jail prior to entry into the Intensive Supervision Program (I.S.P.). Dr. Garbolino then explained the terms and conditions of the Intensive Supervision Program consisting of a 10:00 p.m. curfew, daily journals, weekly budgets, 16 hours a month of community service at menial jobs, meeting with his officer one time each week and meeting with other I.S.P. participants one time each week, random drug testing, and performing dentistry for other I.S.P. patients. Dr. Garbolino also is obligated to make payments of \$500.00 per month toward the restitution which was part of his criminal sentence. At this rate, it will take him more than 16 years to pay the entire amount, but he is expected to pay larger monthly amounts as his income increases. Dr. Garbolino stated that he

has very little equity in his house and cars and has no other assets in addition to his current earnings which approximate \$10,000.00 per month.

On cross-examination Dr. Garbolino's earnings during the years when he was over-billing the insurance carriers were highlighted as well as the fact that he purchased his home after commencement of the fraud. Dr. Garbolino also admitted that probably at least one half of the patient letters submitted to the sentencing judge on his behalf and submitted to the Board as evidence in this hearing (R-2) were recipients of the fraud benefits in that they incurred no financial liability for dental treatment.

The second witness presented by the respondent was Denise Jackson Fuller, Dr. Garbolino's I.S.P. officer. She explained the program in greater detail to the Board including the specific requirements for Dr. Garbolino. She substantiated the terms and conditions previously testified to by Dr. Garbolino and added that she makes approximately eight to ten visits to the Garbolino home each month.

Ms. Fuller advised the Board that Dr. Garbolino's participation in the I.S.P. would continue for the length of his sentence (four years) or could terminate earlier in the event he paid the entire restitution of \$100,000.00. In the alternative, if the restitution was not paid in full at the end of four years, Dr. Garbolino still would be terminated from the program. At that time the State, in all likelihood, would enter a judgment against him in the amount of the balance still due and owing. In the event Dr. Garbolino lost his job as a dentist while in the Program, he still

would be expected to make payments in the amount of \$500.00 per month and also would be expected to find another job within 30 days. If he failed to meet these requirements, he faced the prospective of a possible return to jail for the remainder of his sentence.

The last witness to testify for Dr. Garbolino was his wife, Kathleen Garbolino. She advised the Board she and Dr. Garbolino were married in 1985 and that she already had two children at that time who have been supported by Dr. Garbolino. She stated that she works in Dr. Garbolino's dental office where she earns \$150.00 per week. She also explained to the Board the hardship that her family has been exposed to as a result of Dr. Garbolino's incarceration for three months and the humiliation her children have faced in school as a result of the publicity given to her husband's criminal conviction.

On rebuttal D.A.G. Cobham called Lisa Rible, a former patient of Dr. Garbolino, who was proffered as a witness to rebut respondent's contritional testimony before the Board. However, because of the multiple hearsay aspects of her testimony, the Board disallowed this testimony.

Thereafter, Mr. Dizzia and D.A.G. Cobham presented closing arguments to the Board.

The Board conducted its deliberations in Executive Session on August 16, 1995 continuing to September 6, 1995, and announced its decision in Public Session on September 20, 1995. This Order memorializes the Board's decision.

The Board thoroughly considered the record before it including all of the documentary evidence. The Board concludes that the crime of theft by deception for which Dr. Garbolino was convicted

on March 18, 1994, is a crime of moral turpitude and a crime relating adversely to the profession of dentistry pursuant to N.J.S.A. 45:1-21(f). The Board further concludes that respondent's fraudulent billing practices constitute fraud and deception in violation of N.J.S.A. 45:1-21(b) and professional misconduct in violation of N.J.S.A. 45:1-21(e).

Notwithstanding the recommendations and praise which respondent has received from a number of patients, colleagues and friends who provided letters in his behalf, the Board must take into account respondent's admitted violation of the laws of this State whereby he received money from insurance carriers to which he was not entitled by submitting false insurance claims for payment for dental procedures he never intended to perform. The nature and seriousness of the crimes committed by respondent cannot be minimized or overlooked, nor the effect that the offenses and subsequent conviction have on the public perception of the entire dental profession and on dental insurance carriers who must administer limited funds in accordance with the contractual agreements of policy holders.

Dr. Garbolino's theft was substantial. He admits that he received in excess of \$100,000.00 and perhaps as much as \$140,000.00 over a three and a half year period through his fraudulent acts. Additionally, respondent's thievery was not an isolated incident but consisted of false insurance claims for at least 368 patients and an unknown number of false claims for each of those 368 patients made on a daily basis throughout the fraudulent period. As a result of this multitude of fraudulent insurance claims over an extended period of time the State's investigators were required to conduct an extensive



investigation consisting of a review of patient records, interviews with patients, and analysis of financial information.

The Board recognizes the serious personal losses which respondent may have suffered thus far as a result of his conviction, but the Board also has determined not only that the government suffered expenses but the nature and seriousness of the crimes committed by the respondent demand that the Board exercise its statutory mandate to protect the public from dishonest and unscrupulous dental practitioners. These offenses are extremely serious, and they have profound impact on the Board's duty to protect the safety and welfare of the public. Although there is no evidence that the respondent has placed any patient at risk of physical harm, he has clearly inflicted serious harm on the integrity of the financial system whereby our society has determined to assist its citizens in obtaining dental care through the procurement of dental insurance.

The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. As unfortunate as respondent's circumstances may be at this time, the Board cannot let any sympathy whatsoever for the licensee outweigh its greater duty to assure confidence in the integrity and honesty of licensees to those individuals who seek dental services.

IT IS THEREFORE, ON THIS 20<sup>th</sup> DAY OF SEPTEMBER, 1995,  
ORDERED THAT:

1. The license of the respondent to practice dentistry in the State of New Jersey shall be and is hereby suspended for a minimum period of five (5) years. One (1) year of this suspension shall be

active and shall commence thirty (30) days from receipt of the respondent of the within Order. Respondent shall be given ninety (90) days credit for his 90 days of incarceration, and those days shall be credited to the last 90 days of the active suspension period. The remaining period of suspension shall be stayed and shall constitute a probationary period. Said probationary period shall terminate at the end of five (5) years from the entry date of the within Order or shall continue until all terms and conditions of the within Order have been met including the payment of all restitution.

The respondent shall derive no financial remuneration directly or indirectly related to patient fees paid for dental services rendered during the period of active suspension by other licensees for patients of respondent's practice. Respondent shall not be permitted to enter upon the premises of the dental facility during the period of active suspension or provide any consultation to other licensees rendering treatment to patients of the respondent or sign or submit insurance claim forms for treatment rendered during the period of active suspension or render other administrative or supervisory duties during the period of active suspension.

2. Respondent is hereby assessed a civil penalty in the amount of \$10,000.00. The civil penalty shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board of Dentistry on an installment basis requiring a minimum payment of \$500.00 per month commencing the first day of the month following termination of the active period of suspension. The amount of monthly payment may be adjusted at any time upon mutual agreement of the parties. Any failure to make a payment

when due shall cause the entire remaining balance to become immediately due and payable.


3. Respondent is hereby assessed the cost to the State in this matter in the amount of \$6,374.14. Said costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board of Dentistry no later than the first day of the month following the entry date of the within Order. In the alternative, respondent may elect to pay these costs on an installment basis requiring a minimum payment of \$100.00 per month in accordance with the same terms set forth in paragraph 2 above.

4. Respondent shall continue to make restitution as ordered as part of his criminal sentence through the Intensive Supervision Program. If the Intensive Supervision Program terminates prior to payment of complete restitution, the respondent shall continue to make payments at a minimum of \$500.00 per month. Said restitution payments shall be submitted directly to and administered through the Board of Dentistry.

5. Upon resumption of active practice random and unannounced audits of respondent's patient records and billing records may be conducted by the Board's designees at the Board's discretion and at the expense of the respondent for the entire probationary period. On demand made, respondent shall immediately make available all records necessary to conduct the audit as determined by the Board or its designees. The cost of each such audit shall be based on the standard hourly rate for the Board's investigators prevailing at the time of the audit and shall be due and payable within thirty (30) days

of the respondent's receipt of a statement of such costs from the Executive Director of the Board.

6. Respondent shall cease and desist from any and all misrepresentation, fraud, deception or any other unlawful act in connection with the submission of insurance claims on behalf of patients in any manner whatsoever including, but not limited to, claims for reimbursement for services or procedures which were not performed.



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SAMUEL FURMAN, D.D.S.  
PRESIDENT  
STATE BOARD OF DENTISTRY